

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BOSTON SCIENTIFIC CORPORATION)
and ENDOVASCULAR TECHNOLOGIES, INC,)

Plaintiffs,)

v.)

MEDTRONIC, INC., MEDTRONIC USA, INC.)
and MEDTRONIC VASCULAR, INC.,)

Defendants.)

Civil Action No. 6:08cv320

JURY TRIAL DEMANDED

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Boston Scientific Corporation and Endovascular Technologies, Inc. (collectively, "BSC"), for their Complaint against Defendants Medtronic, Inc., Medtronic USA, Inc. and Medtronic Vascular, Inc. (collectively, "Medtronic"), hereby allege as follows and demand a jury trial on all issues so triable.

THE PARTIES

1. Plaintiff Boston Scientific Corporation is a Delaware corporation having a principal place of business at One Boston Scientific Place, Natick, Massachusetts 01760.

2. Plaintiff Endovascular Technologies, Inc. is a Delaware corporation having a principal place of business at 4100 Hamline Avenue North, St. Paul, Minnesota 55221. Endovascular Technologies, Inc. is a wholly-owned subsidiary of Guidant Corporation, which in turn, is a wholly-owned subsidiary of Boston Scientific Corporation.

3. Upon information and belief, Defendant Medtronic, Inc. is a Minnesota corporation with a principal place of business in Minneapolis, Minnesota.

4. Upon information and belief, Defendant Medtronic USA, Inc. is a Minnesota corporation with a principal place of business in Minneapolis, Minnesota.

5. Upon information and belief, Defendant Medtronic Vascular, Inc. is a Delaware corporation with a principal place of business in Santa Rosa, California.

NATURE OF THE ACTION

6. This is a civil action for the infringement of United States Patent Nos. 6,210,435 ("the '435 patent"), 6,214,038 ("the '038 patent"), 6,395,022 ("the '022 patent"), 6,682,557 ("the '557 patent"), 7,195,639 ("the '639 patent"), 5,676,696 ("the '696 patent"), 5,993,481 ("the '481 patent"), 6,416,542 ("the '542 patent"), 6,464,721 ("the '721 patent") and 6,660,033 ("the '033 patent"). This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Medtronic is subject to personal jurisdiction in this Court as evidenced by, *inter alia*, its systematic and continuous contacts in this judicial district and its offers to sell and sale of products that infringe the '435, '038, '022, '557, '639, '696, '481, '542, '721 and/or '033 patents in this judicial district.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

THE PATENTS

10. On April 3, 2001, the '435 patent, titled "Endovascular Graft Having Bifurcation And Apparatus And Method For Deploying The Same," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '435 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '435 patent is attached hereto as Exhibit A.

11. On April 10, 2001, the '038 patent, titled "Method For Deploying An Endovascular Graft Having A Bifurcation," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '038 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '038 patent is attached hereto as Exhibit B.

12. On May 28, 2002, the '022 patent, titled "Endovascular Graft Having Bifurcation And Apparatus And Method For Deploying The Same," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '022 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '022 patent is attached hereto as Exhibit C.

13. On January 27, 2004, the '557 patent, titled "Bifurcated Multicapsule Intraluminal Grafting System And Method," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '557 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '557 patent is attached hereto as Exhibit D.

14. On March 27, 2007, the '639 patent, titled "Bifurcated Multicapsule Intraluminal Grafting System And Method," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '639 patent, and is the owner

of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '639 patent is attached hereto as Exhibit E.

15. On October 14, 1997, the '696 patent, titled "Modular Bifurcated Intraluminal Grafts And Methods For Delivering And Assembling Same," was duly and legally issued to InterVascular, Inc. as assignee. BSC is the current assignee of the '696 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '696 patent is attached hereto as Exhibit F.

16. On November 30, 1999, the '481 patent, titled "Modular Bifurcated Intraluminal Grafts And Methods For Delivering And Assembling Same," was duly and legally issued to InterVascular, Inc. as assignee. BSC is the current assignee of the '481 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '481 patent is attached hereto as Exhibit G.

17. On July 9, 2002, the '542 patent, titled "Modular Bifurcated Intraluminal Grafts And Methods For Delivering And Assembling Same," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '542 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '542 patent is attached hereto as Exhibit H.

18. On October 15, 2002, the '721 patent, titled "Bifurcated Graft With A Superior Extension," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '721 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '721 patent is attached hereto as Exhibit I.

19. On December 9, 2003, the '033 patent, titled "Bifurcated Graft With A Superior Extension," was duly and legally issued to Endovascular Technologies, Inc. as assignee. BSC is the current assignee of the '033 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '033 patent is attached hereto as Exhibit J.

ACTS GIVING RISE TO THIS ACTION

20. Medtronic sells a number of medical devices and services directed to, *inter alia*, abdominal aortic aneurysms. Upon information and belief, Medtronic offers to sell and sells its products and services in this area under the trade names including, but not limited to, AneuRx®, AAAAdvantage® and/or Talent®.

21. Medtronic has infringed the '435 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States products using, embodying or comprising the inventions claimed in the '435 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

22. Medtronic has infringed the '038 patent by inducing or contributing to the unauthorized use of methods using, embodying or comprising the inventions claimed in the '038 patent, including, but not limited to, by making, using, offering to sell and/or selling within the United States, and/or importing into the United States products and services sold under the trade names AneuRx®, AAAAdvantage® and/or Talent® and other products and services related to stent grafts, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

23. Medtronic has infringed the '022 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, products using,

embodying or comprising the inventions claimed in the '022 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

24. Medtronic has infringed the '557 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, products using, embodying or comprising the inventions claimed in the '557 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

25. Medtronic has infringed the '639 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States products, using embodying or comprising the inventions claimed in the '639 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

26. Medtronic has infringed the '696 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, products using, embodying or comprising the inventions claimed in the '696 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

27. Medtronic has infringed the '481 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, products using, embodying or comprising the inventions claimed in the '481 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

28. Medtronic has infringed the '542 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, products using, embodying or comprising the inventions claimed in the '542 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

29. Medtronic has infringed the '721 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States products, using embodying or comprising the inventions claimed in the '721 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAdvantage® and/or Talent® and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

30. Medtronic has infringed the '033 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States products, using embodying or comprising the inventions claimed in the '033 patent, including, but not limited to, products and services sold under the trade names AneuRx®, AAAdvantage® and/or Talent®

and other products and services related to stent grafts, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b), (c), (f) and/or (g).

31. Medtronic does not have any license to practice the subject matter claimed by the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents. Medtronic does not have any other authority to practice the subject matter claimed by the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents.

32. Upon information and belief, Medtronic has been aware of the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents at all relevant times.

33. Upon information and belief, Medtronic's infringement of the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents has been, and continues to be, willful.

34. Upon information and belief, BSC has complied with any applicable notice provisions of 35 U.S.C. § 287(a) with respect to the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BSC prays for judgment:

A. Adjudging that Defendant Medtronic has infringed the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents;

B. Enjoining Medtronic, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any of them, from making, using, offering to sell and/or selling within the United States, and/or importing into the United States, any medical device or any other product that infringes or induces or contributes to the infringement of the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents prior to the expiration of those patents, including any extensions;

C. Awarding BSC damages adequate to compensate for Medtronic's infringement of the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents, together with interest and costs as fixed by the Court;

D. Adjudging that Medtronic has willfully infringed the '435, '038, '022, '557, '639, '696, '481, '542, '721 and '033 patents and trebling the damages awarded to BSC for such infringement pursuant to 35 U.S.C. § 284;

E. Declaring this case to be exceptional within the meaning of 35 U.S.C. § 285 and awarding BSC the attorney fees, costs and expenses they incur in this action; and

F. Awarding BSC such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff BSC hereby demands a trial by jury for all the issues so triable.

Dated: August 12, 2008

Respectfully submitted,

/s/ Robert Christopher Bunt

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